

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

---

FELICIA HELTON,

Plaintiff,

v.

DECISION AND ORDER  
09-CV-494

AVRIO GROUP SURVEILLANCE SOLUTIONS, INC.,  
and JOHNSON CONTROLS, INC.,

Defendants.

---

---

The instant matter was referred to Magistrate Judge Leslie G. Foschio pursuant to 42 U.S.C. §636(b)(1) for supervision of all pre-trial proceedings. Defendant Johnson Controls, Inc. (“Johnson Controls”) filed a motion for summary judgment on November 29, 2012 and a motion for partial summary judgment as to its cross-claims on November 30, 2012. (Dkt. Nos. 70 and 72) Defendant Avrio Group Surveillance Solutions, Inc. (“Avrio Group”) also filed a motion for summary judgment on November 30, 2012. (Dkt. No. 71) On November 6, 2013, Magistrate Judge Foschio issued a Report and Recommendation recommending that Johnson Controls’ motion for summary judgment and motion for partial summary judgment be granted, and that Avrio Group’s motion for summary judgment be denied. (Dkt. No. 95)

On December 16, 2013, the plaintiff and Johnson Controls filed a Stipulation of Dismissal discontinuing, with prejudice, the action as to Johnson

Controls. (Dkt. No. 103) An Order was issued discontinuing the action as to Johnson Controls on December 17, 2013. (Dkt. No. 104) Thus, this Court need not consider those portions of the Report and Recommendation which pertain to motions made by Johnson Controls, and those motions will be dismissed as moot.

On November 25, 2013, defendant Avrio Group filed objections to the Report and Recommendation. (Dkt. No. 101) Plaintiff filed a response on January 15, 2014 (Dkt. No. 106) and defendant filed a reply on January 27, 2014. Oral argument was held on February 12, 2014, and the Court considered the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review, and after reviewing the submissions from the parties and hearing oral argument, the Court hereby adopts Magistrate Judge Foschio's findings in their entirety.

Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendant Avrio Group's motion for summary judgment is denied.

The matter is referred back to Magistrate Judge Foschio for further proceedings.

SO ORDERED.

*Richard J. Arcara*  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

Dated: March 14, 2014